

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20581
of Charles L. Wight, et al., to
Appropriate from an Unnamed Stream
Tributary to Mormon Creek in
Tuolumne County

Decision D 1157

ADOPTED DEC 19 1963

DECISION DENYING APPLICATION

Application 20581 to appropriate unappropriated water having been filed; a protest having been received; a public hearing having been held before the State Water Rights Board in Sacramento, California, on May 23, 1963, before Kent Silverthorne, Chairman, and Ralph J. McGill, Member; applicants and protestants having appeared and presented evidence; the evidence received at said hearing having been duly considered; the Board finds as follows:

1. Application 20581 is for a permit to appropriate 0.5 cubic foot per second (cfs) by direct diversion, year-round, for fish culture purposes from an unnamed stream tributary to Mormon Creek in Tuolumne County. The point of diversion is to be located within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 22, T2N, R14E, MDB&M.

2. The applicants propose to construct a trout fish hatchery adjacent to the unnamed stream and above the junction of the unnamed stream with Springfield Mine Stream. Water will be diverted from the unnamed stream into hatching tanks just below the point where the stream emerges from the Saratoga Mine Tunnel. From the hatching tanks the water will run through four concrete rearing ponds, each approximately 15 feet long, four feet in width, and containing water to a depth of approximately 8 inches. Water will return to the stream channel from the lowermost pond. The construction of 12 catchout ponds on the stream channel, each approximately 3 feet in depth, 10 feet in width, and 20 feet in length, is also proposed. These ponds will be used by the public to catch the mature trout.

3. Protestants Edgar H. and Ruth N. Thrower divert from Mormon Creek through the Gale Ditch at a point approximately 1,000 feet below the site of the applicants' lowermost catchout pond for stockwatering and the irrigation of between 80 and 90 acres of permanent pasture. There are also five other users served by the Gale Ditch between the protestants' intake and their place of use, using a total of approximately 14 miner's inches of water. They purchase this water from the protestants.

4. The applicants entered into an agreement which has been incorporated into a stipulated judgment (Superior Court, Tuolumne County, No. 9256) entered June 4, 1962, wherein they quitclaimed, remised, and released to the protestants all of the

waters of Mormon Creek, the so-called Gale Ditch system and that flowing from Springfield Tunnel, together with all rights and easements therewith, except two miner's inches of flow from the Springfield Tunnel.

5. The protestants and other parties divert the entire flow of Mormon Creek at their point of diversion from May to November. Incidental amounts of water are diverted during the remaining portion of the year for stockwatering. During 1961, a supplemental supply of water was purchased by the protestants from the Pacific Gas and Electric Company due to the fact that the supply in Mormon Creek was insufficient to meet their needs and the needs of the other diverters from the Gale Ditch.

6. The applicants contend that by clearing the reach of the unnamed stream of brush and vegetation from the tunnel portal to the lowermost catchout pond there will be a saving of evapo-transpiration losses which will offset any diminution in the flow of the unnamed stream that may result from their proposed project. No expert testimony was presented by the applicants to establish this as a fact. The applicants have failed to meet their burden of proving that water surplus to the rights of the protestants will be developed by the project.

7. There is no unappropriated water available to supply the applicants.

From the foregoing findings, the Board concludes that Application 20581 should be denied.

ORDER

IT IS HEREBY ORDERED that Application 20581 be, and the same is, denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, this day of , 1963.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member